

BEFORE THE UTAH AIR QUALITY BOARD

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In the Matter of the

Wasatch Energy Systems

STIPULATION AND CONSENT ORDER

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This Stipulation and Consent Order (“Consent Order”) is entered into pursuant to the Utah Air Conservation Act, Section 19-2-101, et seq., Utah Code Annotated 1953, as amended.

BACKGROUND

1. Wasatch Energy Systems (“WES”) operates a municipal waste incinerator at 650 East Highway 193, in Davis County, Utah.

2. On September 10, 1996, the Executive Secretary issued an Approval Order to Davis County Energy Recovery Facility (WES) in accordance with Utah Administrative Code (UAC) R307-1-3.1.

3. Condition 7 of the Approval Order states, in part:

“Emissions to the atmosphere from each discharge point of the bi-flue stack shall not exceed the following rates and concentrations. . . .”

Dioxin/Furan	360 ng/dscm @ 7% O ₂
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Cadmium	.11 mg/dscm @ 7% O ₂
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4. Condition 8 of the Approval Order requires annual stack tests for a compliance demonstration.

5. On September 15, 1998 through September 17, 1998, stack tests were conducted at WES’s Incinerator Stacks A and B.

6. On January 15, 1999, the Executive Secretary received a report dated January 12, 1999, of compliance testing performed at the Unit A Discharge Point of the Bi-Flue

Stack and the Unit B Discharge Point of the Bi-Flue Stack for the September, 1998, testing. The report data indicated the following:

A. At the time of testing, dioxin/furan emissions from the Unit A Discharge Point of the Bi-Flue Stack averaged 624 ng/dscm @ 7% O₂.

B. At the time of testing, dioxin/furan emissions from the Unit B Discharge Point of the Bi-Flue Stack averaged 685 ng/dscm @ 7% O₂.

7. In February, 1999, the Division of Air Quality("DAQ") received a report dated February 3, 1999, of compliance testing performed at the Unit A Discharge Point and the Unit B Discharge Point of the Bi-Flue Stack commencing on December 1, 1998. DAQ determined that it was not notified of the testing as required by Condition 8 of the AO and that the tests were not conducted for Dioxin/Furan using an arithmetic average of three 4-hour minimum stack test runs as required by Condition 7 of the AO.

8. On July 9, 1999, the Executive Secretary issued a Notice of Violation and Order for Compliance on the dioxin/furan violations on Stack A and Stack B for the September 1998 tests and for failing to conduct testing which constitutes an annual compliance demonstration. The Executive Secretary asserts that the Utah Air Quality Board has authority to regulate dioxin (a toxic pollutant) under state law, that the September 1998 tests were valid, and even though the December 1998 tests results were within Approval Order limits, the credible evidence rule does not eliminate the requirement to test as prescribed in the Approval Order which WES failed to do.

9. WES timely requested a hearing before the Utah Air Quality Board contesting the Notice of Violation and Order for Compliance. WES asserts, among other things, that the Utah Air Quality Board does not have authority under state law to regulate dioxin emissions from the energy recovery facility, that the September 1998 dioxin test results were invalid for certain technical reasons, that there is significant imprecision in the reference method used for dioxin testing, and that the energy recovery facility may not have been operating under normal operating conditions during the September 1998 stack tests. WES also asserts that Executive Secretary should accept the December 1998 stack tests as valid and as credible evidence that the energy recovery facility was in compliance with its dioxin emission limit in 1998.

10. In September 1999, WES conducted compliance testing on Stack A and Stack B. In November 1999, the Executive Secretary was notified by Dr. Greg Rigo, a WES contractor, that he had determined that the September 1999 tests were two-hour runs rather than the required four-hour runs and therefore he had discontinued further work on the tests. The Executive Secretary had a representative at the September 1999 tests and believed the tests were four-hour runs and so notified Dr. Rigo on November 11, 1999. The Executive Secretary submitted an Order to Submit information to WES dated January

5, 2000, concerning the September 1999 tests. WES submitted a response to the order on February 5, 1999, which WES represents contained all of the raw data and information in its possession from the tests. After a further request to WES for information dated February 28, 2000, WES obtained and submitted calibration information to the Division of Air Quality on March 8, 2000. The Utah Division of Air Quality reduced the raw data provided with the letter and determined that:

A. At the time of testing, dioxin/furan emissions from the Unit A Discharge Point of the Bi-Flue Stack averaged 1101.1 ng/dscm @ 7% O₂.

B. At the time of testing, cadmium emissions from the Unit A Discharge Point of the Bi-Flue Stack averaged .214 mg/dscm @ 7% O₂.

11. The Executive Secretary asserts that it is WES's responsibility to reduce the data and conduct quality assurance and quality control analysis regarding the data and WES has not provided information or facts which establish that the tests were not conducted properly or under other than normal operating conditions. The Executive Secretary asserts that the results from the tests are enforceable. WES asserts that while DAQ has reduced the raw data provided by WES for the September 1999 stack tests, DAQ has not conducted a quality assurance and quality control analysis regarding the data, nor has DAQ determined whether the energy recovery facility was operating under normal operating conditions during the September 1999 stack tests. As such, WES questions whether the data reduction conducted by the DAQ can be relied upon for compliance purposes.

12. On March 2, 2000, the Executive Secretary issued a Notice of Violation on the dioxin/furan and cadmium violations on Stack A and Stack B for the September 1999 tests.

13. In December, 1999, WES conducted compliance testing on Stack A and Stack B. The test results indicated WES was in compliance with the emission limitations in the Approval Order to include the limitations for dioxin/furans and cadmium.

14. In January, 2000, WES proposed to the Executive Secretary that all pending notices of violation be resolved by WES agreeing to retrofit its energy recovery facility with pollution control equipment designed to meet the proposed federal guidelines substantially sooner than would be required under federal law.

STIPULATION AND CONSENT ORDER

This Consent Order is entered into between WES and the Utah Air Quality Board ("UAQB") pursuant to the Utah Air Conservation Act, UCA Sections 19-2-101 et seq. Without adjudication of any issue of fact or law and without admission of any liability, the

parties hereto, the Executive Secretary of the UAQB and WES, hereby agree as follows:

1. The UAQB has jurisdiction over the subject matter of this Consent Order, pursuant to Utah Code Ann. Sections 19-2-104 and 19-2-110, and jurisdiction over the parties.

2. The Executive Secretary of the UAQB has been authorized by the UAQB pursuant to Utah Code Ann. Sections 19-2-104, 19-2-107, and 19-2-110 to issue Notices of Violation and to negotiate and enter into Consent Orders on behalf of the UAQB.

3. The purpose of this agreement is to settle the alleged violations in the July 9, 1999 Notice of Violation and Order for Compliance, the alleged violations in the March 2, 2000, Notice of Violation, and any other violations of which the Executive Secretary has knowledge up through the date of this Consent Order. It is the Executive Secretary's position that there is no demonstrated reason to invalidate the September, 1998 tests and therefore issuance of the Notice of Violation and Compliance Order was appropriate. It is WES's belief that the September, 1998 tests are technically suspect and the facility may not have been operating under normal operating conditions during the test. It is the Executive Secretary's position that there were dioxin/furan and cadmium emissions violations on Unit A in the September 1999 testing and WES has not provided information which would establish that the tests were invalid. It is also the Executive Secretary's position that after being notified in November that the test runs were not two hours but, in fact, four hours that WES should have continued in analysis of the test results and provided a report to DAQ. It is WES's position that it legitimately stopped the September 1999 tests, and that because DAQ has not conducted a quality assurance or quality control analysis and determined whether the energy recovery facility was operating under normal conditions, the Executive Secretary could not have properly determined that WES violated its approval order.

4. The parties now wish to resolve this matter fully without admissions of any violations, liability, wrongdoing, failure or omissions whatsoever, and without further administrative or judicial proceedings.

5. None of the provisions of this Consent Order shall be considered admissions by any party and shall not be used by any person related or unrelated to this Consent Order for purposes other than determining the basis of this Consent Order.

6. WES and DAQ recognize that EPA is scheduled to establish emission requirements for small municipal waste incinerators. EPA has proposed regulations Federal Register, Vol 64, No 167, August 30, 1999, p 47234 which if finalized as proposed would require WES to meet the new limitations at a time which could be up to 5 years after the approval of a state plan implementing the new regulations. Following issuance of the proposed regulations, WES began analyzing whether it could install

equipment that would allow the energy recovery facility to meet them, which analysis culminated in the proposal WES made to DAQ in January, 2000.

7. A purpose for this agreement is to expedite the installation of retrofit air pollution control technology at WES facilities based on the recognition of WES and DAQ that as currently constructed the WES facilities do not have dioxin controls. The 1996 Approval Order limit of 360 ng/dscm for dioxin/furans was established based on that recognition. The heterogeneous fuel stream at the facility requires installation of retrofit technology to obtain reliable control on dioxin/furans. The proposed federal rules have a dioxin/furan limitation of 123 ng/dscm for existing facilities.

8. In settlement of the alleged violations, a penalty of \$38,000 is assessed against WES. In lieu of payment of the penalty, WES agrees, as provided under UCA R307-130-4, to undertake and complete an emissions control retrofit to its municipal incinerator which will result in additional controls and emissions reductions beyond those necessary to meet existing requirements. The retrofit shall be designed to and shall meet the requirements of the proposed federal rules for existing facilities. WES agrees to construct and operate the retrofit on the following schedule, which is a date significantly earlier than that which would be required under the proposed federal rule:

A. WES shall submit a complete Notice of Intent for the retrofit to the Executive Secretary by March 15, 2000. The Executive Secretary shall review the Notice of Intent by April 15, 2000 to determine if the Notice of Intent is complete. If the Executive Secretary determines the Notice of Intent is not complete, the Executive Secretary shall provide to WES in writing a list of deficiencies by April 15, 2000. WES shall provide the requested information by May 15, 2000.

B. The Executive Secretary, with the cooperation of WES, shall use best efforts to issue a new Approval Order by July 15, 2000.

C. WES shall, by January 1, 2001, or six months after the date the Approval Order is issued, whichever is later, complete equipment procurement for the retrofit.

D. WES shall, by November 1, 2001, or sixteen months after the date the Approval Order is issued, whichever is later, complete construction of the retrofit, and thereafter conduct shakedown of the facility.

E. WES shall conduct performance testing during a 180 day time period beginning February 1, 2002, or nineteen months after the date the Approval Order is issued, whichever is later.

F. WES shall operate under the requirements of the new Approval Order on August 1, 2002, or 25 months after the date the Approval Order is issued, whichever is later.

9. If an event occurs which is beyond the control of WES or its contractors that delays the performance of its obligations under this Consent Order despite the best efforts of WES to fulfill the obligation, WES shall provide to the Executive Secretary in writing within 30 days of the date WES becomes aware of the event an explanation and description of the reasons for the delay and a revised schedule. If the Executive Secretary agrees that the event is beyond the control of WES or its contractors, the Executive Secretary and WES shall establish a revised schedule for performance of the obligations under this Consent Order.

10. The 1996 Approval Order requirements to include testing requirements will remain in effect and enforceable until the retrofit is on line, performance testing has occurred, and the new approval order is enforceable. It is recognized by the Executive Secretary that there may be a need for WES to apply for a temporary construction variance from some provisions of the 1996 Approval Order in installation of the retrofit control equipment. It is the responsibility of WES to apply for a variance from provisions of the 1996 Approval Order in accordance with UCA Section 19-2-113 and implementing rules, UAC R307-102-4. Unless a variance is approved by the UAQB, WES is required to operate in compliance with the 1996 Approval Order requirements. Any violations of the 1996 Approval Order which occur after the date of this Consent Order and prior to the date the new retrofit Approval Order is enforceable, are not covered by this Consent Order, and will be resolved taking into account the factors listed in the Board's penalty policy and the purposes of this Consent Order, including, but not limited to, those purposes stated in paragraph 7.

11. After the performance testing period, the new retrofit Approval Order limitations will be enforceable even if the federal rules are not finalized. The new retrofit Approval Order will establish requirements for pollutants covered under state and federal law and contain the emission limitations in the applicable provisions of the proposed federal requirements for existing small municipal waste combustors. The emission limits contained in the new retrofit Approval Order will not be more stringent than the proposed federal requirements for existing small municipal waste combustors. The new retrofit Approval Order will contain a provision that emission limitations and other requirements will be adjusted to be consistent with the final federal rules, if necessary, to include more stringent limitations if the final federal rules are more stringent than the proposed rules with a schedule for compliance with the more stringent federal rules. If no federal rules are issued, the new retrofit Approval Order will be based on the applicable provisions of the proposed federal requirements for existing small municipal waste combustors, except as modified as provided for under state and federal law.

12. Nothing in this Consent Order waives the rights of WES to contest future notices of violation based on the issues or other defenses raised by WES in this administrative proceeding.

13. Nothing in this Consent Order shall be construed to limit or affect the authority of the Utah Air Quality Board to promulgate rules and establish emission limitations as provided by law.

14. Nothing in this Consent Order shall constitute or be construed as a waiver by the UAQB of its right to initiate enforcement action, including civil penalties, against WES in the event of future noncompliance with the Utah Air Quality Act and implementing rules, nor shall the UAQB be precluded in any way from taking appropriate action to abate a threat to public health or the environment should such situation arise.

15. Any dispute under this Consent Order shall be presented to the Utah Air Quality Board for decision under the processes outlined in the Utah Administrative Procedures Act.

16. A violation of this Consent Order shall be considered a violation of Utah Code Annotated Section 19-2-115(2)(a).

17. WES withdraws its request for a hearing

Dated this _____ day of _____ 2000.

Wasatch Energy Systems

By:

Position:

Utah Air Quality Board

Ursula Kramer

Executive Secretary